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20 November 1980

MEMORANDUM FOR: The Intelligence Transition Team (Att: [redacted]) STAT

SUBJECT : Matters for Possible Consideration

In response to [redacted] request, the following points are submitted as matters possibly appropriate for Transition Team consideration: STAT

1. QUALIFICATIONS FOR DCI AND DDCI.

The first matter is the selection of a new DCI and DDCI. While the names of possible nominees for these positions are presumably outside the scope of the Transition Team, recommendations as to concepts of what the jobs should entail, and the types of persons who should be sought, are appropriate.

a. The present law (50 U.S.C.A. 403) requires that the two positions of DCI and DDCI cannot be filled simultaneously by military officers (active or retired); therefore, one of them must be a civilian, and both can be civilians (George Bush as DCI, with E.H. Knoche as DDCI, is the only instance where both positions were held simultaneously by civilians.) It has usually been considered preferable to have one civilian and one military officer as the mix, in particular because of the tremendous amount of technical business involving the Pentagon. It is probable that CIA would be better served at the present time by bringing in a DCI and DDCI from the "outside." However, this should not overlook the fact that there are several former OSS and CIA officials worthy of favorable consideration.

b. The DCI should preferably be someone the President knows well and has the latter's absolute confidence. Despite the "non-political" nature of the position, a loss or dimunition of Presidential confidence makes the DCI's position untenable and even harmful to the national security. The DCI must be able to see the President personally on short notice if circumstances warrant; in any event, he should probably see the President once a week on intelligence matters, either alone or with other senior Presidential advisors.

c. The DCI and/or the DDCI must have good administrative backgrounds, as well as first class minds and a mind set that will screen out parochial bias, whether substantive or administrative. He should at all times be prepared to give the President, and other senior policy officials, the unvarnished truth, no matter how unpalatable. He should not involve himself in policy matters outside of matters of intelligence policy. His role is to provide the facts on which U.S. policy can be based.

d. The DCI and DDCI must have the confidence of the Select Intelligence Committees (and others) of the Congress, both as to their integrity and credibility. The Intelligence Committees must have the knowledge that

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they are receiving the complete cooperation of the Intelligence Community in furtherance of the Committees' oversight responsibilities (under P.L. 96-450). On the other hand, the DCI must be mindful of the inherent executive powers of the President in such matters. The main point, whenever possible in such a situation, is for the DCI to try to defuse situations leading to Executive/Legislative confrontations.

e. The DCI and DDCI must exercise leadership of the highest order, both in the Intelligence Community and in CIA. The last three and a half years have been traumatic to CIA, because the DCI was not "people" oriented. CIA morale is low, but the Agency is disciplined and will readily respond to strong leadership. Above all, intelligence is people and their morale should be looked into. Forced retirements and resignations have cost the Agency experienced personnel which it could not afford to lose. Many "desk" heads do not yet have the requisite experience. Some "outsiders" who have been brought in were close to disasters. Present DCI leadership in budget matters and Community relations must be repaired to overcome many present frictions between him and the Community. The relations of present budgets to Community objectives need current study. Coordination and leadership are the keys.

2. REORGANIZATION.

This is not the time for major reorganizations, either of CIA or the Intelligence Community. Things must settle down first so that the new DCI and DDCI can exercise their leadership, get an overview of the situation, and then determine what changes really need to be made.

a. A new Executive Order (E.O.) to replace E.O. 12036 should be a first order of business. It must be carefully drafted within the framework of existing laws; the latter cannot be changed by E.O.'s - only by legislation. The latter takes time - E.O.'s need careful coordination, not only within the Community but also with the new Attorney General and White House staff. Draft E.O.'s recently floated are replete with matters which can only be accomplished by legislation and certainly require the input of the new DCI.

b. The concept of an intelligence "czar" on the President's White House staff - whether he is called Director of National Intelligence, Director General of Intelligence, or Assistant to the President for Intelligence - requires legislation because of conflicts with the intelligence provisions of the National Security Act of 1947 and other laws. Consideration should be postponed. Such a concept in one form or other has been discussed for over three decades and has always been found wanting. It has been opposed by several recent DCI's and virtually all experienced personnel who have been consulted. Predictably, such a "czar" will require a burgeoning staff which will represent needless bureaucratic layering of the type which the President-elect sincerely opposes. Such an appointment will also present an unfortunate opportunity to politicize this nation's intelligence structure - again a situation which the President-elect would seek to avoid. Furthermore, the coordinating functions run, by law, to the Agency and not to the DCI.

c. Proposals by some - usually with an axe to grind - to emasculate or "break-up" CIA are not well considered. Suffice it to say that such proposals

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require legislation and a lot more thought than they have received. It is questionable whether a first class person would take the position of DCI should an ill-thought out change come to pass.

d. Whatever views may ultimately prevail, a review is required of all the current statutes (and there are a good number) and Executive Orders which apply to CIA and other components of the Intelligence Community.

e. A close look needs to be taken at the National Intelligence Tasking Center, which seems to require reduction, reorganization, or elimination. It is difficult to find support for it anywhere in its present form.

3. "COMPETITIVE CENTERS OF ESTIMATES."

These are "buzz words" that have been flying around for the last few years. Their meaning varies according to their proponents, some of whose views are parochial.

a. Basically, "competitive centers of estimates" seems to embrace not only a Team A/Team B concept, but also the thought that the President should receive individual national intelligence estimates from CIA, DIA and State Department intelligence. He could then sort out these views and take his pick. This flies in the face of President Truman's reasons for establishing CIG in 1946 and CIA in 1947. In his memoirs (Vol. II, p. 56) Truman explains:

> "On becoming President, I found that the needed intelligence information was not co-ordinated in any one place. Reports came across my desk on the same subject at different times from the various departments, and these reports often conflicted."

Of the establishment of CIG, President Truman continued:

> "Here, at least, a co-ordinated method had been worked out, and a practical way had been found for keeping the President informed as to what was known and what was going on."

b. The desire for "competitive centers" seems to come from those who feel that some past CIA estimates (particularly in the field of Soviet strategic weapons) have missed the mark on the low side. There are those who will disagree, if only on the basis of available data at the time each estimate was written.

c. Basically, the problem is one to make certain that any intelligence production of a major nature which goes forward to senior officials must properly allow for necessary valid non-parochial dissents, if any, and make certain that no such substantive production does violence to, or fails to take note of, any valid contrary opinions of which these senior officers should be aware. Nothing can be worse than resorting to the lowest common denominator of agreement when such agreement, in fact, does not exist. This problem can be solved by men of good will without "buzz words" and without a return to the dark ages. Coordination does not mean forcing agreement; it means making sure that disagreements are presented in a way the reader understands.

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d. The "competitive centers" concept also fails to take note of the fact that national intelligence estimates are a multi-disciplinary product. No longer can one turn to DIA alone for military matters, to State for political matters, and to CIA for the rest. All must be melded into an inter-disciplinary whole, and a coordinated estimate, with dissents noted, should be the answer. Without this, a centralized coordinated product for the President does not exist, and, as a result, the President would be ill-served.

4. THE ROLE OF THE DEPARTMENT OF JUSTICE.

a. Some attention should be focused on the ever increasing role and intrusion of the Attorney General and the Department of Justice (exclusive of the proper functions of the FBI) into the affairs of the Intelligence Community. Basically, such efforts should be restricted to a review (and prosecution, if necessary) of crimes or possible illegalities, and providing or coordinating legal advice when requested.

b. The Attorney General's role has expanded since the issuance of E.O. 11905 in February 1976 and E.O. 12036 in January 1978. In particular, Sec. 3-305 of the latter Order provides that the Attorney General shall "Establish or approve procedures, . . . for the conduct of intelligence activities." In order to carry out these functions, the Attorney General has established the Office of Intelligence Policy and Review with twelve lawyers to carry out these functions! This would appear to be the type of over-regulation which has been criticized by the President-elect.

c. If Justice's Office of Intelligence Policy and Review is not abolished, note needs to be taken of the belief that it does not embrace some of the security standards - both personnel and physical - which are employed within the Intelligence Community.

d. The problem of "leaks" is ever present. Concern has been expressed that the Department of Justice has, on occasion, failed to investigate the possible sources of intelligence leaks when such leaks have been brought to their attention. They have sought assurances in advance that, if they can identify the source, the Department will be allowed to prosecute. Such assurances cannot always be given in advance, because intelligence has to weigh the consequences of the exposure of additional sensitive information in a trial. Perhaps the new "grey mail" statute will help.

5. COUNTERINTELLIGENCE.

a. This is a complex subject, some of whose ramifications may extend beyond the scope of this Transition Team. However, the strengthening of CIA's foreign counterintelligence capabilities needs attention. Care should be taken, however, that CIA not be involved in domestic security from which it is properly barred by statute.

b. Suggestions that a U.S. Counterintelligence Board be established may well be worthy of further study. If such is established by Executive Order, it should probably be in an E.O. separate from the new E.O. on

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the Intelligence Community and positive foreign intelligence, despite an obvious need for some linkage between the two.

6. PFIAB and IOB.

a. There seems to be virtually complete agreement to reestablish PFIAB. Its reestablishment is urged in the 1980 Republican platform. This can easily be accomplished by Executive Order. The importance of PFIAB suggests that it be reestablished by its own separate E.O., as in the past (i.e.: E.O.'s 10656, 10938, 11460, 11984), rather than be incorporated in a general intelligence E.O.

b. The role of an Intelligence Oversight Board needs consideration. Is it now necessary, in that illegalities are reported to the Attorney General and the congressional Select Intelligence Committees, and improprieties are reported to the latter? Should it come under PFIAB's jurisdiction through a PFIAB subcommittee?

7. LEGISLATION.

There are four pieces of legislation of importance to the Intelligence Community which are already drafted and which should be considered for resubmission to the 97th Congress as soon as practicable.

a. Protection of intelligence sources and methods legislation was carefully drawn up and coordinated in the Ford administration. President Ford submitted it to the Congress at the time he issued E.O. 11905 in 1976. There it died, as did a somewhat similar concept in charter legislation (S. 2284) in the present Congress. The National Security Act of 1947 places <u>responsibility</u> on the DCI for protecting intelligence sources and methods from unauthorized disclosure but gives him no <u>authority</u> to carry out the responsibility. The Ford submission would apply criminal sanctions for violations, while at the same time safeguarding the media.

b. Legislation to protect the identity of intelligence agents is still pending in the Congress. The outlook for passage in this session is minimal at most. When reintroduced, the draft provisions which passed the Senate Select Committee are preferable to the House Committee version.

c. Amendments to the Freedom of Information Act have been seriously urged by the DCI, the Director of NSA, and the Director of the FBI. The current workload and costs for processing requests are staggering, and much of this work is useless because it involves search and review of files which will not be released under present FOIA exemptions. While the media and scholarly organizations have opposed proposed amendments, it appears that their objections can be met or overridden.

d. Amendments are badly needed to the Foreign Intelligence Surveillance Act of 1978 (FISA, P.L. 95-511), and have been urged by the DCI, and the Directors of NSA and the FBI.

e. An attempt may be made from sources outside the Administration (such as the ACLU) to introduce legislation to forbid the use of academicians, clerics, and journalists as clandestine intelligence agents.

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This should be opposed. There is no valid reason not to utilize these categories of people should they wish or be willing to offer their services to their country. This is a matter best left to internal regulations, as at present.

8. FOREIGN LANGUAGE TRAINING.

Recently, a scholarly group released a report deploring the decline of foreign language training in secondary schools and institutions of higher learning. CIA has admittedly felt this loss, and the lack of language capability among its younger officers is noted. This can only be a drawback in their utility abroad. CIA used to have a capability to at least some extent in about [redacted] languages and dialects. While the Agency has been trying to step up its language training, your Team may wish to look into this point. STAT

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